

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

Clayton Court Apartments
Plaintiff below,
Appellee.

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Vs.

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C.A. JP13-17-012711

Ashley McDole
Defendant below,
Appellant.

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Trial de novo.

Submitted October 24, 2018.
Published November 7, 2018.

Appearances:

Plaintiff/Appellee represented by David C. Zerbato, Esq.
Defendant/Appellant *pro se*.

The Panel:

Sean P. McCormick, Deputy Chief Magistrate.
Thomas Brown, Justice of the Peace.
Bea Freel, Justice of the Peace.

Procedural History of the Case at Bar.

This matter was originally filed on October 17, 2017 in which the Plaintiff sought possession of the unit pursuant to 25 Del. Code § 5513(b) claiming irreparable harm had occurred (no rental claim ever was attached to this instant matter; the unit is fully subsidized.) Specifically, it was alleged that two residents – Ms. McDole, and a Ms. Cassandra Boldin – engaged in a fist fight with each other. Accordingly, two separate actions seeking to evict based upon the complained of behavior were filed – one against Ms. McDole, and one against Ms. Boldin. In the interest of judicial economy, the matters were heard concurrently. There was some delay in trying the matters as a fact witness (who allegedly had videoed the event) required some level of compulsion to testify. Ultimately the witness relented, and trial for both matters went forth on September 20, 2018. In both cases, judgment was rendered on September 26, 2018 in favor of the Plaintiff for possession. In this instant matter, Ms. McDole filed a notice of appeal on October 2, 2018. A three-judge panel consisting of Deputy Chief Magistrate Sean P. McCormick, Judge Thomas Brown, and Judge Bea Freel convened on October 24, 2018 to consider the appeal de novo. A pre-trial defense motion for a continuance – citing the need to obtain counsel – was denied as untimely.¹ This is the panel's decision after trial. For the reasons stated below, the Court finds in favor of the Plaintiff on the issue of possession.

Facts.

Testimony was taken from Ms. Cassandra Boldin², the co-combatant; Ms. Arabella Walker, the witness who had videoed the fight with her cell phone; and Ms. Donna Marie Rothwell, the property manager for Clayton Court Apartments. Through the testimony of the first two ladies it was established Ms. McDole engaged in a brawl with Ms. Boldin in the courtyard of Clayton Court Apartments, the entirety of which was filmed by Ms. Walker. The video, which was submitted as evidence for the panel's

¹ Ms. McDole had, after the initial judgment against her, sought representation from The Community Legal Aid Society. Because they had already agreed to represent Ms. Boldin on appeal, a conflict existed such that Legal Aid referred Ms. McDole to the Legal Services Corporation of Delaware. Although Ms. McDole called them to make an appointment, she admittedly did little in the way of following up with them. And, given the fact that this filing was in excess of a year old at the time of the de novo hearing, the panel felt that Ms. McDole had more than ample opportunity to seek counsel to assist her in this instant matter.

² As was mentioned, judgement for possession of her unit had been rendered not in Ms. Boldin's favor in her related filing; she had likewise filed for an appeal. She also sought counsel and was represented by The Community Legal Aid Society at the de novo proceeding. Counsel had arranged an agreement between she and Plaintiff such that her appeal was withdrawn in exchange for her testimony. The panel saw no need to inquire further into the agreement between those parties.

viewing, showed both ladies engaging in a loud, vulgar, and violent altercation with each other which lasted approximately ten minutes in duration and ended only when police arrived on the scene. During the course of the fight the parties mutually engaged for a period of time, disengaged, and then re-engaged several times.

Through the testimony of Ms. Rothwell, Plaintiff evidenced the notice of termination putting Ms. McDole on notice of Plaintiff's intent to terminate her lease based upon the complained-of behavior, the lease signed by Ms. McDole on February 17, 2017 as well as the rules and regulations incorporated within the lease that dictates use of the premises. Paragraph No. 13 ("General Restrictions") of the lease holds that "The Tenant agrees not to . . . engage in or permit unlawful activities in the unit, in the common areas, or on the project grounds . . ." The same section states further on notes the Tenant's agreement not to "make or permit noises or acts that will disturb the rights or comfort of neighbors." Paragraph No. 14 ("Rules") of the lease incorporates into the lease the rules and regulations, which were attached to the lease. Paragraph No. 23 ("Termination of Tenancy") sets forth the grounds and process by which either party could terminate the tenancy. Of particular interest was section 6, which reads:

6. Criminal activity by a tenant, any member of the tenant's household, a guest or another person in the tenant's control:

- (a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or
- (b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

Within the Rules and Regulations, two specific paragraphs were deemed applicable – paragraphs 30 and 33. Paragraph 33 states:

Resident shall conduct themselves in a non-threatening manner when interacting with Fairville Management Company Employees, contractors, resident or invitee of any resident. Verbal and physical threats, harassment or foul and abusive language will not be tolerated by residents or their guests. This behavior will be cause for lease termination and/or arrest.

In her defense, Ms. McDole testified that the fight began when an associate of Boldin's struck McDole's child's father, "Freddy," who was visiting to deliver diapers (it should be noted that Boldin held in her testimony that the fight started when Freddy struck her.) As such, McDole advised that the fight – which grew out of the Boldin/Freddy altercation – extended upon her the right to defend herself,

since she became involved in the altercation at first to defend Freddy. Here, Ms. McDole entirely missed the point – it was not so much a case of she being held responsible for her guest’s behavior; the behavior complained of was her own. It was clear from the video that she consciously engaged in the fist fight. She had ample opportunity to retreat or disengage from the situation; instead she clearly is seen reengaging on several occasions in which she could have done otherwise.

Conclusion.

It is clear that the fight Ms. McDole engaged in breached substantially the terms of the lease and the rules incorporated within it. In this instance, the breach caused or threatened to cause irreparable harm to McDole’s co-pugilist (and fellow resident) Boldin as well as the good quiet order of the Clayton Court community. Plaintiff in this instance is well-within their right to terminate the rental agreement. As such, judgment for possession plus the cost of filing is hereby awarded to Clayton Court Apartments.

IT IS SO ORDERED THIS 7th DAY OF NOVEMBER A.D. 2018.

/s/ Sean McCormick (seal)

Deputy Chief Magistrate, for the Panel.